

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

**Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon**

C.P. No. D- 3316 of 2017

Shamim Akhtar,
Petitioner through:

In person

Respondents Through:

Mr. Ali Safdar Depar, Assistant Advocate
General, Sindh.

Date of hearing:

12.09.2019

Date of order:

12.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J. Basically the petitioner has assailed his demotion order from BPS-15 to BPS-14 issued by the Respondent-Sindh Social Welfare Council, without undertaking disciplinary proceedings.

2. Brief facts of the case, in nutshell are that the petitioner was appointed as Junior Clerk (BPS-5) in Respondent-Sindh Social Welfare Council vide letter dated 3.8.1983, thereafter he was promoted to the post of Assistant in BPS-11 vide minutes of 27th Meeting of Sindh Social Welfare Council held on 8.7.1991, then he was awarded selection Grade in BPS-15 vide letter dated 5.11.2002. This Court vide order dated 27.3.2019 directed the petitioner to place on record his initial appointment order to ascertain his status, however he has filed statement dated 12.09.2019 along with bunch of documents and submitted that he is unable to produce his initial appointment letter for the reasons that his folder containing all his educational documents were burnt in the office. He next added that his statement may be treated as his submissions that cover all material points for just decision of his case. We asked him to place on record his promotion letter in BPS-15, whereby he claims to have been demoted in BPS-14; unfortunately, he again failed to place on record the same letter and took the same plea as discussed supra. He submits that, he having sufficient length of service, applied for voluntarily retirement on 28.2.2017, which was declined by the Respondents vide letter dated 30th March, 2017 on the premise that he had been working in the

Respondent-Council purely on contract basis and the contract employees are not eligible for further financial benefits at the end of their service career.

3. At the outset, we asked the Petitioner to satisfy this Court regarding maintainability of the instant Petition. Petitioner, who is present in person, has submitted that he was wrongly demoted from BPS-15 to BPS-14 without assigning any reason; that his salaries for the month of August to December, 2016 have not been paid to him. In support of his submission, he relied upon the Notification dated 4th August, 2016 issued by the Finance Department, Government of Sindh and submitted that post of Assistant was upgraded from BPS-14 to BPS-16 and he has been deprived the benefit of the aforesaid notification, rather he has been discriminated; that he moved various applications to the Competent Authority for redressal of his grievances but to no avail, finally he attempted for voluntarily retirement vide application dated 28.2.2017, but no concrete decision has yet been taken by the Respondent-Department; that he has been performing his duty as Assistant in the Respondent-Council since 1983, therefore, he is entitled for regularization of his service and allied benefits; that he has been discriminated in violation of Article 4, 9 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973; that he is eligible and qualified to be appointed on regular basis under clause 19 of the Resolution dated 06.01.1971, which has statutory force. He has drawn our attention to the Summary for Chief Minister, Sindh for regularization of contract employees of the Respondent-Council and submitted that this Court has already passed several orders with regard to the regularization of services of various organizations and departments of Government of Sindh; therefore his case is on the same footing as decided by this Court. He lastly prayed for allowing the instant petition.

4. The stance of the Respondent-department is that, through the office letter dated 30th March, 2017 Petitioner was informed regarding rejection of his application for voluntarily retirement from the service on the ground that he had been working in Sindh Social Welfare Council, purely on contract basis. Second plea is that his service cannot be regularized and no financial benefit accrued in his favour at any point of time. He was advised to submit his

resignation if he so desires. The case of respondents is that contractual employee cannot claim up-gradation or selection grade, until and unless the service of the contractual employee is regularized under the law, whereas regularization of the service of employees of the Respondent-council is a policy decision of the Government, thus devoid of any interference by this court.

5. As per the profile of Sindh Social Welfare Council, which is, basically a Council constituted for the defunct Province of West Pakistan, having statutory force, is running under the control of Ministry of Social Welfare Department, Government of Sindh. In view of the above background and status of Sindh Social Welfare Council, the same can ordinarily be regarded as a "Person" performing functions in connection with the affairs of the province under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution, thus, the High Court has jurisdiction to interfere in the subject affairs of Sindh Social Welfare Council under the Constitution. On merits, the present Petition relates to the service of the Petitioner, who admittedly, is not a Civil Servant as defined under Section 2(1) (b) (ii) of Sindh Civil Servants Act 1973, but an employee of a Sindh Social Welfare Council, thus, cannot invoke the jurisdiction of Sindh Service Tribunal.

6. Progressing further as to whether there is any violation of Statutory Law, compelling the Petitioner to invoke the Constitutional Jurisdiction of this Court, the Petitioner vehemently emphasized on "Resolution 1971" claiming that clause 19 of the Resolution has been violated, which is a statutory law as such the Petition is maintainable. In this regard, the relevant portion of the Resolution is reproduced as under:-

"19. STAFF OF THE COUNCIL.

(1) The Council may appoint an office Secretary, and such other staff as may be necessary from time to time. None of the persons thus appointed shall be entitled to vote.

(2) Government may loan the services of its own officer to fill any of the above posts.

(3) The scale of pay, honoraria, medical facilities, group insurance, traveling allowance, other allowances and leave to the office Secretary and other employees of the Council shall be in accordance with those prescribed by Government for its own comparable employees of similar status except where necessary on account of some special reasons which should be recorded in writing and prior approval of the Council obtained."

7. On the aforesaid proposition, the Hon'ble Supreme Court in the case of *Mrs. M.N. ARSHAD and others versus Miss NAEEMA KHAN and others* (P L D 1990 Supreme Court 612) has held that Resolution of Federal Ministry of Education

constituting a Board of Governors had not been passed in pursuance of any delegated statutory power. Such Board, thus was neither a corporate body nor a juristic person competent to employ teachers. Petitioner emphasized that the autonomous bodies/organizations established by resolution are not autonomous bodies. They are an extension of Federal Government and their employees are Civil Servants. He further added that there is no contractual obligation between the contesting parties, therefore, his service is deemed to be civil service and he is Civil Servant as per Resolution dated 06.01.1971.

8. Upon perusal of the aforesaid resolution dated 6.1.1971 which explicitly provides that the Government may amend any provision of the Constitution of Council and the Council is authorized to frame regulations.

9. In view of the above legal position of the case, we are unable to endorse the assertion of the Petitioner with regard to the status of the Petitioner as a Civil Servant. Prima-facie, the Petitioner cannot claim statutory violation of clause 19 of the "Resolution", in a writ jurisdiction, in order to bring the case within the test laid down by the Full Bench of this Court in Muhammad Dawood and others versus Federation of Pakistan and others (2007 PLC CS1046). The Grade and Pay Scale, promotion, demotion and seniority fall within the expression "Terms and Conditions of Service" of the Respondent-Council, which is an internal matter/issue of service of the Respondent-Council, which in our view cannot be raised in a Writ Petition.

10. Much emphasis has been laid on Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 which provides that;-

"Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a court, but subject to other provisions of this Act, an employee appointed on ad-hoc and contract basis or otherwise (excluding the employee appointed on daily wages and work-charged basis), against the post in BS-1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the Government department and its project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis."

11. Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 provides that employee appointed on Ad-hoc and contract basis shall be deemed to have been validly appointed on regular basis immediately before the commencement of the Act. Hence, no ambiguity is left that all employees, who fall within the ambit of law shall be regularized in service with effect from the

promulgation of the Act, 2013. However, his case does not fall within the ambit of Section 3 of the Act, 2013, as record is silent, whether the service of the employees of Respondent-Council was regularized by the Respondent-department or otherwise. Therefore, the Petitioner does not have any vested right to seek regularization in service. In our view, the contract employee cannot claim any vested right, even for regularization of service. The policy decision of the Government regarding regularization of the employees of the Respondent-Council or otherwise could not be challenged in a writ jurisdiction of this Court on the purported plea of discrimination, when Article 25 of the Constitution itself provides a provision for such discrimination on the principle of reasonable classification. Record reflects that the Petitioner is at the verge of superannuation age i.e. 60 years and now seeking regularization of his service; therefore, at this stage the service of the Petitioner cannot be regularized.

12. On the issue of regularization of the Petitioner, learned AAG argued that the Respondent-Department had made efforts for regularization of the employees of Sindh Social Welfare Council but the other wings of Government of Sindh i.e. Finance and Planning and Development Department did not agree for regularization of the employees of the Council. At this stage, Petitioner referred the case of one of his colleague namely Sohail Ahmed Khan who retired on attaining the age of superannuation i.e. 60 years and seeks similar treatment, the learned AAG has refuted the claim of the Petitioner and argued that the case of Petitioner is quite different of that case on the ground that petitioner applied for voluntarily retirement for which no provision exists in Sindh Social Welfare Council as the same is running on annually funding of Grant in aid from Sindh Government, there was no any regular budget for payment of the salaries or other expenses of the Employees. He lastly submitted that Petitioner is not entitled for any relief as he was/is not a regular employee of Sindh Government but an employee of Council, he was drawing a gross pay without any deduction of GP-Fund, Benevolent Fund and any other contribution of Government of Sindh announced from time to time; that Petitioner being a contract employee as per

Government Policy has no right to get any Government contribution such as pension, commutation, GP-Fund etc.

13. In the present case there is no material has been placed before us, by which we can conclude that the service of the Petitioner can be regularized by the Respondent-department.

14. Record reflects that the Petitioner has completed 32 years' service in Sindh Social Welfare Council (Headquarter) Karachi, he applied for voluntarily retirement from service as Assistant vide letter dated 28.2.2017 his request was declined by the department vide letter dated 30th March, 2017 on the premise that he worked in Sindh Social Welfare Council on contract basis and there is no provision of financial assistance for contract employee. Prima-facie this assertion negates clause 19 of the Resolution-1971 which explicitly provides that the scale of pay, honoraria, medical facilities, group insurance, traveling allowance, other allowances and leave to the office Secretary and other employees of the Council shall be in accordance with those prescribed by Government for its own comparable employees of similar status. In the present case, Petitioner has rendered 32 years' service, however, the benefits as provided under clause 19 of the Resolution as discussed supra have been denied to him and no plausible reason has been assigned for withholding the same, for which the Petitioner cannot be held responsible. Prima-facie, Petitioner has length of service to ask for the aforesaid benefits, if at all he is entitled for under the law, for that the Respondent-department has to take a concrete step strictly in accordance with law.

15. In the light of facts and circumstances of the case, this Petition is disposed of with direction to the competent authority of Respondent-Department to look into the matter of the Petitioner keeping in view his length of service and take an appropriate decision in the light of Clause 19 of the Resolution-1971 without discrimination strictly in accordance with law, within a period of two months from the date of receipt of the order of this Court.

JUDGE

JUDGE